

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**WILLIAM A BROWN**  
Claimant

**APPEAL NO. 06A-UI-10786-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 10/08/06 R: 04**  
**Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 7, 2006, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 8, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Dan McClean, attorney at law. David Williams participated in the hearing on behalf of the employer with witnesses, Dave Kozak, Scott Goert, Dave Exline, and Craig Besler.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a night stock clerk from July 19, 2004, to October 11, 2006. Scott Goert was the night stock manager and supervised the claimant. The claimant had been warned regarding using profanity in the workplace.

On October 11, 2006, the claimant was working with his brother, Nick, who also was a night stock clerk. Goert overheard the claimant and Nick engaged in a loud verbal exchange, which Goert perceived as an argument. He told them to stop arguing and separate. The claimant's reply to Goert was "quit being ignorant." Goert told the claimant that he needed to watch his mouth or he would be sent home. The claimant told Goert that he did not like Goert's attitude. After Goert told the claimant that it was his last warning, the claimant response was: "Fuck you Scott." This was in an area in which customers could possibly hear the claimant. Goert then told the claimant to leave and come back the next morning to talk to Goert's supervisor, Dave Kozak. The claimant asked Goert if he was going to physically remove him. Goert replied no but someone else would.

The claimant punched out but then went to the backroom where the assistant manager, Craig Besler, the inventory manager, Dave Exline, and Goert were talking. The claimant used profanity as he protested Goert sending him home. He also punched one of the shelving units. He was again instructed to leave work and he left.

On October 12, 2006, Kozak discharged the claimant for the insubordination and profanity displayed on October 11.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant admits to calling his supervisor ignorant and being angry enough to punch a shelving unit but denies using profanity. The claimant's testimony that he did not use profanity is not at all credible and is outweighed by the employer's witnesses' testimony to the contrary.

The claimant's repeated belligerent conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant, especially since he had been warning before about his conduct at work. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated November 7, 2006, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs